

feature linking the broccoli plant species appears to be heat tolerance. Applicants agree with this assertion by the Examiner, in part.

The Examiner further asserts that a heat tolerant broccoli plant is obvious or anticipated over any of Yang, et al., Heather, et al. or DuFault, et al., and therefore does not constitute a special technical feature as defined by PCT Rule 13.2 because it does not define a contribution over the prior art.

Applicants disagree with the Examiner's description of Heather, et al., Dufault, et al., and Yang, et al. Applicants respectfully assert that the technical feature linking the claims is not simply heat tolerant broccoli. The claims are directed to commercially acceptable heat tolerant broccoli. None of the cited references anticipate or render obvious the pending claims directed to commercially acceptable heat tolerant broccoli. As such, the technical feature linking the pending claims does constitute a special technical feature as defined by PCT Rule 13.2.

In the event that the restriction requirement is maintained despite the above discussion, Applicants elect M7007 with traverse for the reasons presented above. All of the pending claims (54-80) read on the elected species.

Applicant requests examination of the elected subject matter on the merits.

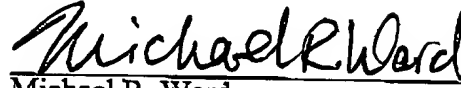
In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Assistant Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 500852000101. However,

the Assistant Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Respectfully submitted,

Dated: October 24, 2002

By:



Michael R. Ward
Registration No. (38,651)

Morrison & Foerster LLP
425 Market Street
San Francisco, California 94105-2482
Telephone: (415) 268-6237
Facsimile: (415) 268-7522

MORRISON & FOERSTER LLP

Attorneys at Law
425 Market Street
San Francisco, California 94105-2482
Telephone: (415) 268-6237
Facsimile: (415) 268-7522

OFFICIAL

TO: U.S. Patent and Trademark Office
EXAMINER: Cynthia Collins
GROUP ART UNIT: 1638

Facsimile: 703/308-4242
Telephone: 703/605-1210

ATTORNEY DOCKET NO: 500852000101

From: Michael R. Ward

Date: October 24, 2002

We are transmitting a total of 5 pages (including this page).
Original or hard copy to follow if this box is checked ☐.

FAX RECEIVED
OCT 25 2002
GROUP 1600

If you do not receive all pages, please call (415) 268-6237 as soon as possible.

Preparer of this slip has confirmed that facsimile number given is correct: 8693/MRW1

This facsimile contains confidential information which may also be privileged. Unless you are the addressee (or authorized to receive for the addressee), you may not copy, use, or distribute it. If you have received it in error, please advise Morrison & Foerster LLP immediately by telephone or facsimile and return it promptly by mail.

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office 703/308-4242, Attn: Examiner C. Collins on October 24, 2002.


LILIA OLSEN

Our Ref: 500852000101
Serial No.: 09/869,002 filed June 22, 2001
Title: HEAT TOLERANT BROCCOLI
Inventor(s): Robert BARHAM, David JOYNT

Enclosures:

1. Transmittal - 1 pg
2. Response to Restriction Requirement Mailed October 3, 2002, Paper 6 - 3 pgs

Michael R. Ward (38,651)

Please type a plus sign (+) inside this box → ☐

PTO/SB/21 (08-00)

Approved for use through 10/31/02. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**TRANSMITTAL
FORM**

(to be used for all correspondence after initial filing)

Application Number 09/869,002

Filing Date June 22, 2001

First Named Inventor Robert BARHAM and David JOYNT

Group Art Unit 1638

Examiner Name C. Collins

Total Number Of Pages In This Submission

Attorney Docket No. 500852000101

ENCLOSURES (check all that apply)☐ Fee Transmittal Form☐ Fee Attached☒ **RESPONSE TO RESTRICTION
REQUIREMENT MAILED OCTOBER
3, 2002, PAPER 6 - 3 pgs**☐ After Final☐ Affidavits/declarations☐ Extension of Time Request☐ Express Abandonment Request☐ Information Disclosure Statement☐ Certified Copy of Priority Document(s)☐ Response to Missing Parts/
Incomplete Application☐ Response to Missing Parts
under 37 CFR 1.52 or 1.53☐ Assignment Papers
(for an Application)☐ Drawing(s)☐ Licensing-related Papers☐ Petition☐ Petition to Convert to a
Provisional Application☐ Power of Attorney, Revocation
Change of Correspondence Address☐ Terminal Disclaimer☐ Request for Refund☐ CD, Number of CD(s) _____☐ After Allowance Communication to
Group☐ Appeal Communication to Board of
Appeals and Interferences☐ Appeal Communication to Group
(Appeal Notice, Brief, Reply Brief)☐ Proprietary Information☐ Status Letter☐ Other Enclosure(s) (please identify
below):

Remarks

OCT 25 2002
GROUP 16mm

FAX RECEIVED

SIGNATURE OF APPLICANT, ATTORNEY OR AGENT

Firm

MORRISON & FOERSTER LLP

or

425 Market Street, San Francisco, CA 94105-2842

Individual Name

MICHAEL R. WARD (Reg. No. 38,651)

Signature

Michael R Ward

Date

October 24, 2002

CERTIFICATE OF FACSIMILE TRANSMISSIONI hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office 703/308-4242,
Attn: Examiner C. Collins on October 24, 2002.

LILIA OLSEN

Burden Hours Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Box Patent Application, Washington, DC 20231.